

**General Information Letter:** Tax Protester Letter.

January 27, 1998

Dear:

This is in response to your letters dated December 23, 1997 and January 12, 1998, regarding the authority of the State of Illinois to subject your income to taxation. Your letters were recently redirected within the Department to my attention. Illinois Department of Revenue (the "Department") rules require that the Department issue two types of letter rulings, private letter rulings ("PLR") and general information letters ("GIL"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax law and are not binding on the Department, but PLRs are binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your questions and the information you provided require that we respond with a GIL.

In your letter dated December 23, 1997, you state the following:

Thank you for your timely response to my inquiry related to amending State individual tax returns for past years. The fact that you provided the necessary IL-1040-X Forms was greatly appreciated. I believe I also asked a couple of questions that were, unfortunately, not addressed.

As stated in my previous correspondence to the Illinois Department of Revenue, I have provided Affidavits, Declarations and "Points and Authorities" to the IRS. In short, the facts presented within said documents prove that I am not a "U.S. citizen," "United States citizen" or "citizen of the United States," as defined in 26 CFR 1.1-1(c). The facts contained in said Affidavits and Declarations were obtained from a number of sources that I'm sure you're familiar with, such as the Internal Revenue Code, the Code of Federal Regulations the Federal Register, unoverturned U.S. Supreme Court rulings and the Constitution of the United States of America, as well as others. As stated to the IRS, none of the facts contained within the Affidavits and Declarations can be truthfully rebutted. I have NOT exercised ANY privilege which would make me a "person liable" for the Title 26, Subtitle A, graduated income tax. I am OUTSIDE of the jurisdiction of 26 U.S.C. Any presumptions(s) they may have had, to the contrary, were in error.

As asked previously, if I am not liable for the Title 26, Subtitle A, graduated income tax as a result of my alienage to the State of the Forum of

United States Tax Laws (federal), what statute(s) make me liable for Illinois individual income taxes? Please keep in mind that I am NOT a "citizen of the State of Illinois," "Resident of the State of Illinois," or "Resident of this State." The same applies to my labor. I am a sovereign Citizen of Illinois (or of the Illinois Republic). I do not reside, labor or receive any type of compensation from within the "State" of Illinois, as this is considered, in law, to be one of the federal "States," under the jurisdiction of the [District] United States. As I am, by IRC definition, a "Nonresident Alien" under United States tax laws, I believe the same to be true on the state level. If Illinois Individual Income Tax regulations are based upon federal conformity clauses, as is the case with most states of the Union, then I would be outside the jurisdiction of those tax laws as well, provided I earn no "taxable" compensation through the exercise of any government-granted privilege. Also, please be aware that, Title 26, Subtitle A graduated income taxes are COMPLETELY VOLUNTARY for sovereign Citizens of one of the 50 states of the union, provided no taxable compensation was earned through the exercise of any government-granted privilege. In the event that I do earn compensation "taxable" by the State of Illinois, is there an "IL-1040-NR" Form for "Nonresident Aliens" under Illinois Tax Laws as well? If so, please provide me with one, so that I may use it when filing my 1997 State of Illinois individual tax return. Also, there should also be a State Form which would serve virtually the same purpose as a Federal Form W-8 (Certificate of Foreign Status). Please provide a copy of this form to me as well.

To summarize, I require the following information and State Forms:

- 1) If I am not liable for federal individual income taxes (Title 26, Subtitle A, graduated income tax) as a result of my alienage to the State of the Forum of United States tax laws, and earn no compensation taxable by the federal government, what statute(s) make me liable for State of Illinois Individual Income Taxes (and based upon the information provided within this letter)?
- 2) In the event that I do earn compensation taxable by the State of Illinois following the exercise of a government-granted privilege, is there an IL-1040-NR Form that I should use when filing my return to the State? If not, can you provide the correct form?
- 3) The State of Illinois should have a Form similar (in purpose) to the Federal Form W-8 (Certificate of Foreign Status) for Citizens of Illinois outside the jurisdiction of 26 U.S.C. who are "Nonresident Aliens" under United States tax laws (per IRC definition) and not United States citizens as defined in 26 CFR 1.1-1(c) or citizens of the State of Illinois? I believe it may be called a "Nonresident Withholding Exemption Certificate," as it is on Form 590 for the State of California.

Please provide me with the answers to these questions, as well as the requested forms, as quickly as possible so that I may accurately and correctly prepare my tax return documentation for 1997. As I'm sure you will agree, it is very important for taxpayers to provide accurate information when filing their Federal and State income tax returns so that any confusion and delays can be avoided. Through your continued support and mutual cooperation, we can keep the great State of Illinois heading in the right direction! Thank you, again, for all your help. You may direct your response, and the requested State Forms, to the address noted below. Have a

very merry Christmas (although these wishes are probably belated) and a terrific New Year.

In another letter to the Department dated January 12, 1998, you state the following:

Thank you for your response dated January 8, 1998. The timeliness of your answers is greatly appreciated, to say the least. At least one of your answers did prompt an additional question, though I'm certain that even that, and a few additional questions will be handled in like fashion. It's comforting to know that, especially in this day and age, a Citizen can ask questions of governmental agencies and receive courteous and professional treatment. I appreciate the effort you put forth in sending me the IL-1040-NR, IL-1040X and IL-1040. My biggest concern is filing the correct forms with the correct information. In that way, headaches can be avoided by everyone involved.

There are as I'm sure you'll agree, many similarities between the [Federal] IRS and the Illinois Department of Revenue. These similarities include exemptions resulting from federal legislation, U.S. Supreme Court rulings, etc. It should be noted that the Internal Revenue Code and the [State of] Illinois Revenue Code and implementing regulations are written for "persons subject to its jurisdiction"

As you know in law, two separate and distinct jurisdictions exist in Illinois as in all 50 states.

- (a) The first is the DeJure Illinois Republic which consists of all the DeJure county lands. The People or the DeJure Citizens of these counties and of the Illinois Republic are Sovereign and the lawful government acts as sovereign Trustee for the purpose of "protecting the rights of the Citizens." The right of the sovereign Citizen to receive compensation to sustain his/her existence is not a privilege taxable by the State or Federal Government.
- (b) Inside these sovereign state lands, certain areas exist which have been legally purchased by, and ceded to, the [District] United States, by the consent of the state legislature, pursuant to Article I, Section 8, Clause 17 of the Constitution for these United States, "for the erection of forts, magazines, arsenals, dockyards and other needful buildings..." In these areas (which are considered in the "exterior" limits of the Illinois Republic, the [District] United States is Sovereign and exercises "exclusive jurisdiction in all cases whatsoever..." The Illinois Revenue Code should reflect that the taxing authority of the Franchise Tax Board is limited to all territory within these [exterior] limits owned by or ceded to the United States. I do not reside in such a United States Territory.

Also, see Public Law No. 8177-76th Congress, entitled the "Buck Act". It is found in Title 4 U.S.C., Chapter 4, Section 101-113, The States. This Act redefined the words "the States", as "Words of Art" which include only the "federal States" and the "federal enclaves" and instrumentalities" within the 50 freely associated compact states. The "inhabitants" of those federal areas as defined in the Buck Act as, "subject to the jurisdiction of the

United States." Such jurisdiction is limited to those born in territories over which the United States is Sovereign.

While searching for various tax-related answers, I found two Court cases that I believe are applicable to my situation, which confirm that there is a clear distinction made between the "State of Illinois" and the "Illinois Republic," and the differences in rights enjoyed by natural born, DeJure, sovereign Citizens as compared to those enjoyed by "U.S. citizens".

"The individual may stand upon his Constitutional rights as a Citizen...He owes no duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the Land long antecedent to the organization of the State, and can only be taken from him by due process of the law and in accordance with the Constitution. He owes nothing to the public so long as he does not trespass upon their rights."

Supreme Court of these United States, Hale vs. Henkle 201 U.S. 43 at 74

"All subjects over which the sovereign power of the state extends [i.e., corporations] are objects of taxation but those [i.e., sovereign natural born Citizens] over which it does not extend are, upon the soundest principle, exempt from taxation. This proposition may almost be pronounced as self evident. The sovereignty of a state extends to everything which exists by its own authority or exists by its permission.

McCulloch v. the State of Maryland, 4 Wheat., 316

As far as I can tell, the IL-1040 and IL-1040X are for U.S. citizens "subject to the jurisdiction of the [District] United States, working or residing within territories under the exclusive jurisdiction of the [District] United States, located within the exterior boundaries of, but no longer belonging to, the Sovereign Illinois Republic. The Schedule NR would be used by U.S. citizens "subject to the jurisdiction of the [District] United States", living and working outside the boundaries of a territory under the exclusive jurisdiction of the [District] United States, and within the Sovereign Illinois Republic. Considering the two Court rulings noted above, one of which issued by the Supreme Court, this would appear to be true. The Illinois Revenue Code should state that, to be required to file a tax return, one must be first, "subject to the Revenue Code's personal filing requirement," or something to this effect. Please confirm the first, second and last sentence of this paragraph for me.

The Administrative Code for the State of Illinois should have a "FEDERAL CONFORMITY" cause which relies on Subtitle A, of the Internal Revenue code to determine if any individual is subject to withholding at the source. For example, Title 22, Section 4340-1(f) of the Administrative Code for the State of California states, "The requirements for a complete exemption from state wage for the State of California states, "The requirements for a complete exemption from state wage withholding are the same as the federal requirements." I do not access to this publication and, unfortunately, must rely on your generosity and professionalism to obtain answers found therein.

If the Administrative Code for the State of Illinois has such a clause which states the same thing (as I believe it must), then my compensation (from my employer) is not subject to withholding at the source, I would only be required to file an IL-1040-NR return to report interest received from the

financial institutions I do business with (State-chartered banks). Can you confirm this as being correct?

My two final questions should be rather simple for you to answer (hopefully). The definition of "income" is not clear within the Illinois Revenue forms, as the word "income" is used within the definition. Can you confirm that the term "income" has the same meaning for both Federal (as defined by the U.S. Supreme Court) and State taxes? In like vein, does the term "wages" have the same definition for both Federal and State taxes? Can you confirm these two definitions for me?

In order to prepare my individual tax return for 1997 correctly (to claim overpayment of State taxes withheld), it is imperative that I obtain written confirmation of these statements.

Please find a copy of "AFFIDAVIT OF CLAIMS FOR EXEMPTION AND EXCLUSION FROM GROSS INCOME OF REMUNERATION, WAGES AND WITHHOLDING" that I provided to the Internal Revenue Service/Kansas City Service Center (final page of transmittal). You may find the information contained therein to be of help to you. If possible, please incorporate it into whatever file or record system you may have on (probably based upon my SSN). In addition, I would also like to assure you that I am NOT a tax protester. I agree that the Title 26 Subtitle A graduated income tax is both legal and constitutional when imposed upon the proper subjects of taxation. I am, and have always been, more than willing to pay any tax for which I am liable.

As stated in my initial letter, you may direct your response(s) to the address noted below my signature. I sincerely appreciate all the help and effort you are putting forth on my behalf, and thank you for your patience and attention.

Please be advised that the Department is not related to or derive its authority to collect the Illinois income tax from the Internal Revenue Service ("IRS"). Therefore, the Department was not a party to any documents that you may have sent to the IRS regarding your federal income tax liability. You must direct questions concerning your federal income tax liability to the IRS. Further, the documents that you may have sent to the IRS do not affect your Illinois income tax obligation. Therefore, your references to the IRS are inappropriate in regards to your Illinois income tax liability.

You stated in your letters that you are not a citizen of the United States nor a resident of Illinois. Instead, you stated that you are a nonresident alien of Illinois. The Fourteenth Amendment of the United States Constitution provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." A person cannot be a nonresident alien of a state if he or she resides in that state. Canniff v. Commissioner of Internal Revenue, No. 94-2937, U.S. App. LEXIS 8613 (7th Cir. April 6, 1995). In your letter to the Department, you indicated that you currently reside in Durand, Illinois. Thus, you are a resident of the State and are subject to the State's income tax. To revoke your Illinois residency status, you must **physically** leave the State with the intent to establish residency in another state. 86 Ill. Admin. Code 100.3020(b). Further, in your letter dated December 23, 1997, you referred to yourself as one of the "...sovereign Citizens of one of the 50 states of the Union." By using the word "citizen", you are admitting that you are either a citizen of the United States or a resident of the State of Illinois (the state in which you live), or both.

Otherwise, the term "citizen" would have no meaning because a nonresident alien cannot be a citizen of the United States.

As a resident of the State, the Illinois Constitution establishes a nexus between you and the Department. The State Code of Civil Procedure (the "CCP") grants an administrative agency the power under law to make administrative decisions. The CCP includes each department of the State within the definition of administrative agency. 735 ILCS 5/3-101. The Civil Administrative Code of Illinois (the "Code") states that the Department of Revenue is one of the several departments of the State Government. 20 ILCS 5/2 and 3. Therefore, the Department is an administrative agency and has the authority to handle matters arising under the Illinois Income Tax Act ("IITA"), which includes obtaining jurisdiction over all taxpayers. The Illinois General Assembly enacted the IITA, effective August 1, 1969. 35 ILCS 5/101 et seq. Since the Department administers the IITA under a delegation of authority from the General Assembly, it has the authority to collect the State income tax (IITA Section 201(a) and (b)). The obligation to pay Illinois income tax is not limited to federal, state and municipal employees. The State's income tax is imposed on every resident who earns income in Illinois. Only those items that are expressly provided for in the IITA are exempt from taxation in Illinois. The IITA does not contain exemptions for income earned from a private employer or from self-employment activities. Thus, although you may not be a government employee, your income is still subject to taxation in Illinois if you are a resident of this State. Even if you are a nonresident, any income you received due to personal services performed within Illinois is taxable by the State.

In addition to the authority cited above, Article IX, Section 3, of the Illinois Constitution expressly provides for an income tax, and Section 1 of Article IX grants the General Assembly the power to raise revenue by law. Pursuant to this authority, the General Assembly enacted 35 ILCS 5/101 et seq., commonly known as the Illinois Income Tax Act ("IITA"). Under the IITA, the definition of the term "person" includes the term "individual". 35 ILCS 5/1501(a)(18). The IITA defines the term "resident" as "an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year. . . ." The term "taxpayer" is defined as "any person subject to the tax imposed" by the IITA, which imposes a tax measured by income on "every individual. . . for each taxable year. . . on the privilege of earning or receiving income in or as a resident of this State." 35 ILCS 5/201(a). In both of your letters to the Department, you indicated that you reside in Durand, Illinois. As an individual who resides in the State and who earns or receives income in the State, you are a "taxpayer" of the State and are subject to the State's income tax. Therefore, since you receive wages or other income, the statement in your letter dated December 23, 1997 that you do not earn any taxable compensation in Illinois is incorrect.

You stated in your letter dated December 23, 1997, that you do not earn any "taxable compensation through the exercise of any government-granted privilege." As defined in IITA Section 1501(a)(3), the term "compensation" means "...wages, salaries, commissions and any other form of remuneration paid to employees for personal services." The IITA does not define the term "wages". However, under IITA Section 102, any term not defined in the IITA "...shall have the same meaning as when used in a comparable context in the United States Internal Revenue code...." Section 3401(a) of the IRC defines "wages" as "...all remuneration...for services performed by an employee for his employer...." Pursuant to IRC Section 3401(c), the term employee includes "...an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia...." IRC Section 3401(c) is not a limitation of the definition of the term "employee". Instead, the purpose of

that subsection is to expressly include government officials and employees within the definition of the term "employee", but it does not limit the definition of such term to those individuals. Therefore, although you may not be a government official or employee, any remunerations you receive from an employer in exchange for personal services are included within the definition of "wages" as that term is defined in IRC Section 3401.

In your letter dated January 12, 1988, you requested information regarding the meaning of the term "income". The IITA does not contain a definition for the term "income". IRC Section 61 states that compensation for services (i.e., wages) are included in income and that the term "gross income" includes "income from whatever source derived, included (but not limited to)" the types of income listed in that section. Federal courts have consistently held that wages must be included in gross income. Ficalora v. Commissioner of Internal Revenue, 751 F.2d 85, 86 (2nd Cir. 1984). The terms income and gross income are not defined in the IITA. However, pursuant to IITA Section 102, Illinois adopts the meaning given to the term "income" in IRC Section 61 and the definition of adjusted gross income in IRC Section 62. Section 203(a) of the IITA uses these terms to define base income, which is used in Section 202 of the IITA to define net income. Your Illinois income tax liability is based on your net income.

In both of your letters to the Department, you referred to the "Illinois Republic". Please be advised that there is no such entity known as the "Illinois Republic". The State Constitution is labeled the "Constitution Of The **State of Illinois**" (emphasis added). The first line of the State Constitution clearly states "We, the People of the **State of Illinois**" (emphasis added). On April 18, 1818, the United States Congress passed enabling legislation to allow the people of the Illinois territory "to form . . . a constitution and state government. . . and when formed, shall be admitted into the Union upon the same footing with the original states, in all respects whatever." 3 U.S. Stat. at Large, 428. On August 26, 1818, the Illinois territory held a constitutional convention which accepted the provisions of the enabling act. On December 3, 1818, Congress accepted Illinois into the Union by passing the following resolution: "That the state of Illinois shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever." Resolution of Congress, December 3, 1818, 3 U.S. Stat. at Large, 536. See Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375, 1994 Ind. Tax LEXIS 20. Therefore, Illinois is one of the states of the United States. Since you stated in your letter to the Department that you live in Durand, Illinois, you live in the State of Illinois, not the "Illinois Republic".

Pursuant to IITA Section 201, Illinois imposes a tax measured by net income on every individual who earns or receives income in Illinois. Under such authority, the Illinois income tax is imposed on residents, and on **nonresidents** if such individuals earn or receive income within the State. Any individual who does not come within the meaning of the term "resident", as defined in IITA Section 1501(a)(20), is a nonresident pursuant to IITA 1501(a)(14). Illinois residents must file IL-1040 (Illinois Individual Income Tax Return). Nonresidents must file IL-1040 and attach Schedule NR (Nonresident and Part-Year Resident Computation of Illinois Tax), and must compute his/her Illinois income tax liability as directed on such form and the accompanying schedule. Residents and nonresidents may file IL-1040-X (Amended Individual Income Tax Return) if they need to make adjustments or corrections to information previously reported on their IL-1040 or on Schedule NR. Further, if you are a nonresident, you would not report interest income received from financial institutions located in Illinois on your Illinois tax return. A nonresident would report such income on

his personal tax return for the state where he resides. However, based on earlier discussions, you are a resident of Illinois, and therefore would not attach Schedule NR to your IL-1040. Further, Illinois does not have a form that serves the same purpose as federal Form W-8. A person has "foreign status" in references to the United States, not individual states. If a person does not live in a state, he is a nonresident of that state. Such person would file that state's nonresident tax return. As previously stated, in Illinois, a nonresident would file IL-1040 and attach Schedule NR.

There is no such statute known as the "Illinois Revenue Code" as you referred to in your letter dated January 12, 1998. Income taxes in Illinois are determined pursuant to provisions in the Illinois Income Tax Act, 35 ILCS 5/101 et seq. Section 502 of the IITA requires an individual taxpayer to file an Illinois personal income tax return if such individual is: (i) liable for a tax imposed by the IITA, or (ii) required to file a federal income tax return, regardless of whether such person is liable for a tax imposed by the IITA, in the case of a resident. If you are a nonresident who received or earned income in Illinois, you will be required to file an Illinois personal income tax return pursuant to item (i) above. Alternatively, if you are an Illinois resident, you will be required to file an Illinois income tax return pursuant to item (ii) above. Therefore, even if you are a nonresident of Illinois, you would still be required to file an Illinois personal income tax return and will be subject to the Illinois income tax if you receive or earn income within this State that is subject to the IITA. Thus, nonresident status will not eliminate your Illinois income tax liability.

As provided for in IITA Section 701(a), your employer is required to withhold Illinois income taxes from your wages if such employer maintains an office or transacts business within this State and is required under the provisions of the IRC to withhold a tax on compensation paid in this State. As prescribed in IRC Section 3402(a), "...every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary." Since you earn wages that are paid in Illinois and your employer is required to withhold federal taxes from such wages pursuant to IRC Section 3402(a), your employer is required to withhold Illinois income taxes from your wages. Further, even if your employer is not required to withhold Illinois income taxes from your wages, compensation paid to you for services performed in Illinois would still be subject to the Illinois income tax. In such situation, you would be required to make estimated tax payments as provided for in Article 8 of the IITA. Therefore, any income earned in Illinois and reported on Schedule NR would be subject to taxation in Illinois. Finally, the IITA in no way is based on or depended upon the laws of the State of California. Therefore, it is inappropriate to cite such laws as a basis for a tax position in Illinois.

You may contact the Department if you have additional questions.

Sincerely,

Paul Caselton  
Associate Chief Counsel (Income Tax)